

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

JAMEIL MIDDLETON,	)	
	)	CASE NO. C06-1324RSM
Petitioner,	)	
	)	
v.	)	ORDER ADOPTING REPORT AND
	)	RECOMMENDATION
NEIL CLARK,	)	
	)	
Respondent.	)	
_____	)	

**I. INTRODUCTION**

This matter comes before the Court on the Report and Recommendation (“R&R”) of the Honorable Mary Alice Theiler, United States Magistrate Judge, and petitioner’s objections thereto. Petitioner, proceeding *pro se*, challenges the lawfulness of his continued detention without bond under section 236 of the Immigration and Nationality Act (“INA”), 8 U.S.C. § 1226. He also argues that his detention violates the Due Process Clause of the United States Constitution, in that he has not received proper individualized detention reviews.

Respondent answers that petitioner is being held under INA § 241, 8 U.S.C. § 1231, and his detention under this provision is lawful. Respondent further answers that petitioner has been provided proper detention reviews, and he has declined to fully participate in those reviews.

01 The Court, having reviewed petitioner's habeas petition, respondent's motion to  
02 dismiss, Judge Theiler's R&R, and the remaining record, hereby ADOPTS that portion of the  
03 R&R setting forth the facts of this case, Judge Theiler's conclusion that petitioner is being held  
04 pursuant to INA § 236(a), and Judge Theiler's recommendation with respect to petitioner's  
05 motion to compel. While the Court ultimately agrees with Judge Theiler's remaining  
06 recommendations, the Court writes this separate Order to further address petitioner's statutory  
07 and constitutional challenges to his continued detention as raised through his Objections.  
08

## 09 **II. BACKGROUND AND PROCEDURAL HISTORY**

10 Petitioner Jameil Middleton is a native and citizen of Belize. He has been detained by  
11 U.S. Customs and Immigration Enforcement ("ICE") since February 23, 2005. Although ICE  
12 initially determined that petitioner should remain detained pending his immigration  
13 proceedings, an Immigration Judge ("IJ") later determined that petitioner could be released  
14 upon the posting of a \$20,000 bond. Petitioner did not post that bond, and remained in  
15 custody. The IJ subsequently found petitioner removable, denied his applications for asylum,  
16 withholding of removal and protection under the Convention Against Torture ("CAT"), and  
17 ordered him removed to Belize. The Board of Immigration Appeals ("BIA") affirmed the IJ's  
18 decision.  
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21 Petitioner then filed a Petition for Review with the Ninth Circuit Court of Appeals. As  
22 a result, the court entered a stay of removal pending resolution of that petition. The petition  
23 for review remains pending. Petitioner's opening brief was filed June 6, 2006. *Middleton v.*  
24 *Gonzales*, 05-75239 (9th Cir. Sept. 8, 2005). Respondent's answering brief was filed July 26,  
25 2006. *Id.* As of this date, the case has not been calendared for oral argument.  
26

01 ICE has conducted two annual reviews of petitioner's custody since he filed the  
02 Petition for Review, in November 2005 and November 2006. In both instances, the ICE  
03 reviewing officer recommended continued detention, and the ICE Field Office Director  
04 followed such recommendation.  
05

### 06 III. DISCUSSION

07 In his Objections, petitioner appears to assert two challenges to his detention under the  
08 Supreme Court's decision in *Zadvydas v. Davis*, 533 U.S. 678 (2001). In *Zadvydas*, the  
09 petitioner challenged his continued detention where removal was impracticable because no  
10 country would accept him. The Supreme Court held that INA § 241, which permits detention  
11 of removable aliens beyond the 90-day removal period, does not permit indefinite detention.  
12 533 U.S. at 689-697 (explaining that "if Congress had meant to authorize long-term detention  
13 of unremovable aliens, it certainly could have spoken in clearer terms."). The court explained  
14 that "once removal is no longer reasonably foreseeable, continued detention is no longer  
15 authorized by statute." *Id.* at 699. It further held that detention remains presumptively  
16 reasonable for six months. *Id.* at 701.  
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19 Petitioner first argues that prolonged detention on appeal can amount to indefinite  
20 detention under *Zadvydas*. In support of that argument, petitioner relies on two recent Ninth  
21 Circuit decisions, *Nadarajah v. Gonzales*, 443 F.3d 1066 (9th Cir. 2006), and *Tijani v. Willis*,  
22 430 F.3d 1241 (9th Cir. 2005). In *Nadarajah*, the Ninth Circuit found the five-year detention  
23 of a refugee whose case was pending before the Attorney General to be unreasonable. 443  
24 F.3d at 1080. Similarly, in *Tijani*, the court ordered an Immigration Judge to release the  
25 petitioner on bail unless the Government could prove he was a flight risk or a danger to the  
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01 community where he had been detained pending appeal for two years and eight months under  
02 INA § 236(c). 430 F.3d at 1242.

03         This Court acknowledges that petitioner's current detention has been lengthy.  
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05         However, the Court, like Judge Theiler, distinguishes petitioner's situation from those in  
06 *Nadarajah* and *Tijani*. First, unlike *Nadarajah*, the length of petitioner's detention is not due  
07 to the Attorney General's significant delay, but rather to his Petitioner for Review, and related  
08 stay of removal, which will take some time to resolve. Further, unlike *Tijani*, petitioner is not  
09 being held under INA § 236(c). More importantly, unlike *Zadvydas*, petitioner's detention has  
10 a definite end-point. As this Court has determined on other occasions, when the Ninth Circuit  
11 decides his case he will most likely be released or removed.<sup>1</sup> *Beqir v. Clark*, C05-01587RSM,  
12 2006 U.S. Dist. LEXIS 41135 (W.D. Wash. June 6, 2006), *affirmed*, 2007 U.S. App. LEXIS  
13 1822 (9th Cir. 2007); *see also Soberanes v. Comfort*, 388 F.3d 1305, 1311 (10th Cir. 2004)  
14 (explaining that "detention is clearly neither indefinite nor potentially permanent . . . it is,  
15 rather, directly associated with a judicial review process that has a definite and evidently  
16 impending termination point. . ."). Further, if petitioner's case is remanded to the BIA, he  
17 can seek relief at that time if appropriate. For these reasons, the Court agrees with Judge  
18 Theiler that petitioner's detention is not indefinite.

21         Petitioner next argues that he has not been afforded adequate custody reviews.  
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23         Because this Court has determined that petitioner is being held under INA § 236(a), the Court  
24 addresses petitioner's argument in that context. Under INA § 236(a), respondent has

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26         <sup>1</sup> The Court acknowledges that petitioner's travel document to Belize expired in January 2006. However, the Court presumes that because respondent was able to easily secure the document once, he will be able to secure such travel document easily again.

01 discretion to decide whether an alien should be detained, released on bond, or released on  
02 conditional parole upon a finding of flight risk and danger to the community. Factors to be  
03 considered include: (1) the nature and number of disciplinary infractions received while  
04 incarcerated or detained; (2) the nature and severity of criminal convictions, sentences  
05 imposed, parole history, recidivism, and other criminal history; (3) psychiatric and  
06 psychological reports; (4) evidence of rehabilitation; (5) favorable factors including ties to the  
07 United States; (6) prior immigration violations; (7) flight risk, including history of escapes and  
08 failures to appear; and (8) other information that is probative of whether the alien is likely to  
09 endanger the community or violate his or her release conditions. 8 C.F.R § 241.4(f).  
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12 Here, a review of the record indicates that respondent considered those factors when  
13 reviewing petitioner's custody status. The ICE reviewing officer highlighted petitioner's  
14 criminal history, an existing bench warrant for failure to appear, his lack of plans for life in the  
15 community, his lack of work experience and his lack of documentation of rehabilitation. The  
16 ICE reviewing officer also highlighted petitioner's mental status, noting that he has attempted  
17 suicide in the past and has threatened to kill himself if he is removed. Respondent has provided  
18 evidence that petitioner was personally served with notice of each review, and of his  
19 opportunity to present letters of support. Petitioner has failed to rebut that evidence, other  
20 than with conclusory statements that ICE hid his letters of support. Further, while plaintiff  
21 complains that the warrant for his failure to appear in a California court was issued because he  
22 was detained in ICE custody, the record shows that the warrant was issued on June 22, 2004,  
23 approximately eight months before he was taken into ICE custody.  
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26 Accordingly, the Court finds that petitioner's detention has been implemented in a fair

01 manner. Following his initial detention, petitioner had an individualized bond determination,  
02 whereupon the IJ determined that he could be released upon the posting of a \$20,000 bond.  
03 His custody status has been reviewed twice since then, although petitioner has apparently  
04 declined to participate. As a result, petitioner's continued detention does not violate  
05 procedural due process requirements. *See Demore v. Kim*, 123 S. Ct. 1708, 1720 (2003).  
06

#### 07 IV. CONCLUSION

08 Having reviewed petitioner's habeas petition, respondent's motion to dismiss, Judge  
09 Theiler's R&R, and the remainder of the record, the Court hereby ORDERS:  
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11 (1) Petitioner's § 2241 petition (Dkt. #7) is DENIED.

12 (2) Petitioner's Motion to Compel (Dkt. #19) is DENIED.

13 (3) This action is DISMISSED with prejudice.

14 (4) The Clerk is directed to send copies of this Order to the parties and to Judge  
15 Theiler.

16 DATED this 2 day of April, 2007.  
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20 RICARDO S. MARTINEZ  
21 UNITED STATES DISTRICT JUDGE  
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